

## United States District Court, Northern District of Illinois

<b>Name of Assigned Judge or Magistrate Judge</b>	John W. Darrah	<b>Sitting Judge if Other than Assigned Judge</b>	
<b>CASE NUMBER</b>	02 C 4344	<b>DATE</b>	10/2/2002
<b>CASE TITLE</b>	MARILYN S. JONES vs. DEAN ANGELA STARKS		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

**MOTION:**

**DOCKET ENTRY:**

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m)   ☐ Local Rule 41.1   ☐ FRCP41(a)(1)   ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry]   Status hearing held and continued to 10/16/02 at 9:00 a.m. Enter Memorandum Opinion And Order. Defendants', Angela Starks and Charles Green's motion to dismiss is granted. If plaintiff fails to appear at scheduled status, case may be dismissed for want of prosecution.
- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input type="checkbox"/> Notices mailed by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input checked="" type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to judge/magistrate judge.	U.S. DISTRICT COURT 02 OCT - 3 PM 5:30 FILED-02-0114	number of notices OCT 4 2002 date docketed <i>ean</i> docketing deputy initials date mailed notice mailing deputy initials	<b>Document Number</b> <div style="font-size: 2em; margin-top: 20px;">13</div>
LG      courtroom deputy's initials	Date/time received in central Clerk's Office		

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DOCKETED

OCT - 3 2002

MARILYN S. JONES,

Plaintiff,

v.

DEAN ANGELA STARKS;  
DR. CHARLES GREEN, President; and  
OLIVE HARVEY COMMUNITY  
COLLEGE,

Defendants.

Case No. 02 C 4344

Honorable John W. Darrah

OCT 4 2002

**MEMORANDUM OPINION AND ORDER**

Plaintiff, Marilyn S. Jones, filed a single-count complaint against Defendants, Dean Angela Starks ("Starks"), Dr. Charles Green ("Green"), and Olive Harvey Community College, alleging violation of the Americans with Disabilities Act, ("ADA"), 42 U.S.C. § 12101 *et seq.* Starks and Green have moved, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss the complaint. For the reasons that follow, Starks and Green's motion to dismiss is granted.

**LEGAL STANDARD**

When considering a motion to dismiss, well-pleaded allegations in the complaint are accepted as true. *Turner/Ozanne v. Hyman/Power*, 111 F.3d 1312, 1319 (7th Cir. 1997). Any ambiguities in the complaint are construed in favor of the plaintiff. *Kelly v. Crosfield Catalysts*, 135 F.3d 1202, 1205 (7th Cir. 1998). Dismissal is proper only when it appears beyond doubt that Plaintiff can prove no set of facts to support the allegations in his or her claim. *Strasburger v. Board of Education*, 143 F.3d 351, 359 (7th Cir. 1998).

“Although the Federal Rules of Civil Procedure do not require a plaintiff ‘to set out in detail the facts upon which he bases his claim,’ . . . he must ‘set out sufficient factual matter to outline the elements of his cause of action or claim, proof of which is essential to his recovery.’” *Benson v. Cady*, 761 F.2d 335, 338 (7th Cir. 1985) (internal citation omitted). A complaint will not avoid dismissal if it contains “bare legal conclusions” absent facts outlining the basis of the claims. *Perkins v. Silverstein*, 939 F.2d 463, 467 (7th Cir. 1991).

### **BACKGROUND**

For the purposes of this motion to dismiss, the following allegations are taken as true.

From September 22, 2000 until April 4, 2001, Plaintiff was employed by Olive Harvey Community College, where Charles Green is the President and Angela Starks is the Dean. Plaintiff was one of ten part-time employees in the Counseling Department. Plaintiff held the position of Program Advisor/Program Assistant/Counselor’s Aide during this time. The other part-time employees held the position of Counselor/Lecturer. All part-time staff in the Counseling Department worked on a contractual basis. In January 2001, Plaintiff’s contract was renewed for the Spring semester, January through May 2001. During her employment, Defendants were aware of Plaintiff’s alleged disabilities.

On April 2, 2001, Plaintiff requested to have the morning of April 4, 2001, off due to her alleged disability. Initially, Plaintiff’s request was granted. However, Plaintiff was called in to work later that morning. On April 5, 2001, Plaintiff was terminated for taking off two hours due to her alleged disability. A similarly situated non-disabled employee was allowed to take off three days on three separate occasions but was not discharged.

## DISCUSSION


Starks and Green move to dismiss the complaint against them, arguing that they are not “employers” within the meaning of the ADA.

The ADA defines “employer” as “a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person.” 42 U.S.C. § 12111(5)(A). “[I]ndividuals who do not otherwise meet the statutory definition of ‘employer’ cannot be liable under the ADA.” *EEOC v. AIC Sec. Investigations, Ltd.* (“AIC”), 55 F.3d 1276, 1282 (7th Cir. 1995). In *AIC*, the Seventh Circuit held that the ADA does not impose individual liability on the agents of an “employer”. 55 F.3d at 1281. Therefore, Starks and Green’s motion to dismiss Starks and Green is granted.

## CONCLUSION

For the reasons stated herein, Defendants’, Angela Starks and Charles Green’s, Motion to Dismiss is granted.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
John W. Darrah, Judge  
United States District Court

Date: October 2, 2002